

District of Columbia Corrections Information Council



YOUTH REHABILITATION ACT REPORT

September 26, 2019



District of Columbia Corrections Information Council

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About the District of Columbia Corrections Information Council

The District of Columbia Corrections Information Council (CIC) is an independent oversight body mandated by the United States Congress and the Council of the District of Columbia to inspect, monitor, and report on the conditions of confinement in correctional facilities where inmates from the District of Columbia are incarcerated. This includes facilities operated by the Federal Bureau of Prisons (BOP), the District of Columbia Department of Corrections (DOC), and private contractors.

The CIC reports its observations and recommendations to the District of Columbia Representative in the United States Congress, the Mayor of the District of Columbia, the Council of the District of Columbia, the District of Columbia Deputy Mayor for Public Safety and Justice, the Director of the BOP, the Director of the DOC, and the community.

Although the CIC does not handle individual complaints or provide legal representation or advice, individuals are still encouraged to contact the CIC. Reports, concerns, and general information from incarcerated DC residents and the public are very important to the CIC, and they greatly inform our inspection schedule, recommendations, and reports. However, unless expressly permitted by the individuals or required by law, names and identifying information of inmates, corrections staff not in leadership, and members of the general public will be kept anonymous and confidential.

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INTRODUCTION

The Federal Youth Corrections Act¹ (FYCA) was enacted in 1950 in order to provide sentencing alternatives for youth offenders ages 18 to 22. Following congressional repeal of the FYCA in 1984, the District of Columbia enacted the Youth Rehabilitation Amendment Act (YRA) of 1985, which provides for sentencing alternatives similar to those that had been available under the FYCA.² The initial YRA applied to youth under 22 years of age who were sentenced as adults for any crime other than murder; however, the Youth Rehabilitation Amendment Act of 2018 applies to youth under 25 years of age who are sentenced as adults for “any crime other than murder, first degree murder that constitutes an act of terrorism, second degree murder that constitutes an act of terrorism, first degree sexual abuse, second degree sexual abuse, and first degree child sexual abuse.”³ Under the National Capital Revitalization and Self-Government Improvement Act of 1997, all persons convicted of a felony in violation of the District of Columbia code are required to serve their sentence(s) in the federal system under the custody of the Bureau of Prisons.⁴ Currently, there are approximately 250 DC Code Offenders in both the custody of the Bureau of Prisons (BOP) and the District of Columbia Department of Corrections (DOC) serving sentences under the provisions of the 2018 YRA.

METHODOLOGY

The CIC is statutorily required to report on the conditions of confinement and programming provided to District of Columbia youth offenders⁵ in the custody of the Bureau of Prisons.⁶ In preparing this report, the CIC reviewed several sources, including the Youth

¹ 18 U.S.C. §§ 5005. et seq. (repealed by Pub. L. 98–473, 98 Stat. 2027, Title II, § 218(a)(8) (Oct. 12, 1984)). *See also* Youth Corrections Act, 28 CFR § 2.64 (1988), available at <https://www.law.cornell.edu/cfr/text/28/2.64>.

² Youth Rehabilitation Amendment Act of 1985, D.C. Law 6-69, Sec. 4(a) – (f)(Jul. 29, 1985), <https://code.dccouncil.us/dc/council/laws/docs/6-69.pdf>.

³ D.C. Law 22-197. Youth Rehabilitation Amendment Act of 2018, D.C. Code § 24–101.01 Sec. 102(a)(6)(2019), <https://code.dccouncil.us/dc/council/laws/22-197.html>

⁴ National Capital Revitalization and Self-Government Improvement Act of 1997 (Revitalization Act), Pub. L. No. 105-33, title XI, 111 Stat. 712, Subtitle C - Criminal Justice, Chapter 1- Corrections, Sec. 11201 (a)-(b), p. 484 (Aug. 5, 1997), available at <https://www.govinfo.gov/content/pkg/PLAW-105publ33/pdf/PLAW-105publ33.pdf>.

⁵ Id. at Sec. 101(c)(C) (youth offenders, as that term is defined in section 2(6) of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901(6)), in the custody of the Bureau of Prisons).

⁶ *Corrections Information Council*, D.C. Code § 24–101.01(f)(1)(C)(2019), <https://code.dccouncil.us/dc/council/code/sections/24-101.01.html>.

Corrections Act⁷, the Youth Rehabilitation Amendment Act of 1985,⁸ and the Youth Rehabilitation Amendment Act of 2018.⁹ In addition, we interviewed DC inmates housed within the BOP, as well as Program Coordinators within the BOP. We also consulted with the BOP Correctional Programs Branch, and utilized testimony from our previous Executive Director, Michelle Bonner.¹⁰ The CIC also reviewed the report prepared by the Criminal Justice Coordinating Council regarding YRA offenders in BOP custody.¹¹

CIC FINDINGS

- a) The YRA authorizes the BOP to provide developmentally appropriate services for youth offenders, but does not mandate that the BOP do so.
- b) The BOP does not currently provide treatment and programs specifically designed for YRA offenders.
- c) The DOC does not currently provide specific treatment and programs specifically designed for YRA offenders.
- d) The programming benefits and rehabilitative efforts that existed under the 1985 YRA are absent under the 2018 version.

⁷ 28 CFR § 2.64

⁸ D.C. Law 6-69, (Jul. 29, 1985), <https://code.dccouncil.us/dc/council/laws/docs/6-69.pdf>.

⁹ Youth Rehabilitation Amendment Act of 2018, D.C. Code § 22-197 (2018), <https://code.dccouncil.us/dc/council/laws/22-197.html>.

¹⁰ Testimony of Michelle Bonner, former Executive Director Corrections Information Council, Bill 22-0451, the “Youth Rehabilitation Amendment Act of 2017” October 26, 2017 at <https://cic.dc.gov/page/cic-public-testimony>

¹¹ Criminal Justice Coordinating Council, The District’s Youth Rehabilitation Act: An Analysis, (September 8, 2017), https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf.)

STATUTORY AUTHORITY

The following section provides the relevant parameters of the current 2018 YRA as applicable to the District of Columbia:

Facilities, treatment, and services for youth offenders.¹²

(a) The Mayor shall provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, and protection of the following youth offenders:

(1) Those pending trial on charges of having committed misdemeanor or felony offenses under District law; and

(2) Those convicted of misdemeanor or felony offenses under District law and who are in the District's care or custody.

(a-1)(1) By September 30, 2019, the Mayor shall develop and submit to the Council a strategic plan for providing the facilities, treatment, and services for youth offenders required by subsection (a) of this section.

(2) The strategic plan shall include recommendations for adopting and implementing inter-agency programming by District agencies to address the following:

(A) The educational, workforce development, behavioral and physical health care, housing, family, and reentry needs of youth offenders before commitment, while in District or federal care or custody, and upon reentry;

(B) The availability of a continuum of developmentally appropriate, community-based services for youth offenders before commitment, while in District care or custody, and upon reentry;

(C) Best practices in restorative justice for victims, youth offenders, including for youth offenders convicted of violent offenses, and persons at risk of becoming youth offenders;

(D) The expansion of diversion programs for persons at risk of becoming youth offenders; and

(E) Outreach by the District to committed youth offenders in District or federal care or custody to identify needs for services and plan for reentry.

(3) In developing the strategic plan required by this subsection, the Mayor shall consult with community-based organizations with expertise in juvenile justice issues and justice system-involved young adults 18 through 24 years of age.

(b) Repealed.

(c) The federal Bureau of Prisons is authorized to provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, segregation, and protection of youth offenders convicted of felony offenses under District law and in federal care or custody.

BACKGROUND

In December of 2018, the DC Council passed the Youth Rehabilitation Amendment Act of 2018, which seeks to address the lack of specific programming for individuals sentenced under the previous YRA.¹³ The term “programming” encompasses a variety of organized classes or structured

¹² D.C. Code § 24-902, <https://code.dccouncil.us/dc/council/code/sections/24-902.html>.

¹³ D.C. Law 22-197, <https://code.dccouncil.us/dc/council/laws/22-197.html>.

activities offered by an institution in order to foster cognitive, psychological, and/or physiological rehabilitation. Programming allows an incarcerated person to develop skills relative to improving or managing their education, mental health, substance abuse, or workplace training.

Individuals incarcerated under the YRA have access to the standard programming of the BOP or DOC, such as GED/Adult Basic Education (ABE) programming, residential and non-residential drug abuse programming, and vocational programming- where available (vocational programs were designed to allow the inmate to acquire marketable job skills through training or an apprenticeship program). However, there are presently no programs specifically targeted towards the YRA population.

The Act requires such a degree of specificity because the Youth Act was designed in order to address the cognitive skills of that population, which are not yet fully developed.¹⁴ The need is greater for YRA offenders since their age has been proven as receptive to rehabilitative efforts, thereby strengthening the importance of establishing and operating programs specifically tailored towards their population.¹⁵

The 2018 amendment to the YRA requires the Mayor of the District of Columbia to “develop and submit to the Council a strategic plan for providing the facilities, treatment, and services for youth offenders [in the care and custody of the DOC],” by September 30, 2019. The legislation also specifies that the BOP is authorized to provide these services for youth offenders, but it does not appear to confer any affirmative obligation on the BOP to provide these services.

The CIC raises two particular concerns regarding the execution of this legislation:

- 1) There are currently no programs specifically provided by the DOC for YRA offenders. As the CIC continues to monitor the process of implementing such programs, specific proposals are anticipated from the Mayor’s office to the DOC. Those proposals should

¹⁴ See D.C. Code § 24–902(a), <https://code.dccouncil.us/dc/council/code/sections/24-902.html>; See also Steinberg, Lawrence, et al., “Are Adolescents Less Mature Than Adults?” *American Psychologist*, October 2009, Vol. 64, No. 7, 583–594, available at http://psych.colorado.edu/~mbanich/p/steinberg2009_are_adolescents.pdf.

¹⁵ Muller, Robert T., Ph.D., “Rehabilitation Benefits Young Offenders, Solitary confinement stifles growth, ignites pain”, *Psychology Today*, (Sep.17, 2015), <https://www.psychologytoday.com/us/blog/talking-about-trauma/201509/rehabilitation-benefits-young-offenders#targetText=Research%20has%20also%20linked%20the,re%2Dentry%20into%20their%20communities>; See also Henggeler, Scott W, Ph.D. Treating serious anti-social behavior in youth: The MST approach. *Juvenile Justice Bulletin*. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention. (May 1997), available at <https://files.eric.ed.gov/fulltext/ED412438.pdf>

comprehensively detail the type of programming that will be made available to YRA offenders in DOC custody. However, it is unclear how the recipients of any such innovative programs will continue to benefit post-sentencing since they will ultimately be transferred to the custody of the BOP¹⁶.

- 2) There are currently no specific requirements for future treatment or programs provided by the BOP for YRA offenders. There are also no records of current programs specifically designed by the BOP for YRA offenders.

The Mayor's proposals to the DOC will be instrumental to formulating targeted recommendations for programs and treatments for the YRA offenders in the custody of the BOP.

PLACEMENT OF YRA OFFENDERS

As of March 2019, the total population of YRA offenders in BOP custody was 246 people. When categorized according to their placement, a majority of offenders were housed in medium security, federal correctional institutions. *See Figure 1 below.*

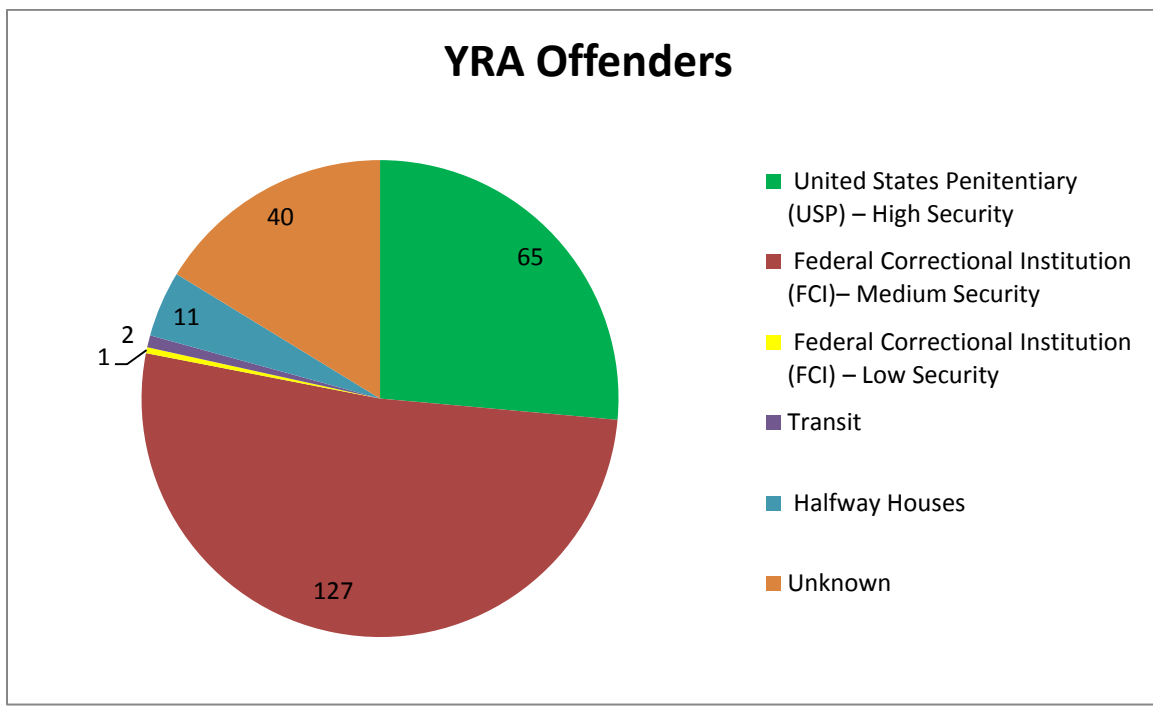


Figure 1

¹⁶ D.C. Code § 24–101(a), <https://code.dccouncil.us/dc/council/code/titles/24/chapters/1/>.

DETAILED FINDINGS

- a) The YRA authorizes the BOP to provide developmentally appropriate services for youth offenders, but does not mandate that the BOP do so.**

The Federal Bureau of Prisons is authorized under the YRA to provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, segregation, and protection of youth offenders convicted of felony offenses under District law and in federal care or custody. The Mayor is responsible for providing these facilities, treatment, and services. However, most of these 250 offenders are outside the Mayor's jurisdiction. The YRA only authorizes the BOP to provide the above mentioned services for these offenders, but cannot mandate that the BOP do so.

- b) The BOP does not currently provide treatment and programs specifically designed for YRA offenders.**

The BOP does not provide specific treatment and programs for YRA offenders, but the standard programming opportunities that are available to anyone who is confined within the BOP is also available to this particular population. There are programs that a YRA offender might access, such as Court Services and Offender Supervision Agency's (CSOSA) Young Adult Program, BOP standard programming, and DOC standard programming, but a YRA sentence is not a qualifying criteria for any of the existing programs.¹⁷

The BOP has one program designed for younger incarcerated individuals up to age 32 with a sentence of 60-months or longer, entitled the Bureau Rehabilitation And Values Enhancement (BRAVE) program.¹⁸ This program was not designed as a rehabilitative program. It was designed as an orientation to prison life, "to facilitate favorable institutional adjustments and reduce incidents of

¹⁷ See Criminal Justice Coordinating Council, THE DISTRICT'S YOUTH REHABILITATION ACT: An Analysis, at 5 (September 8, 2017),

https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf.

¹⁸ Testimony of Michelle Bonner, former Executive Director Corrections Information Council, Bill 22-0451, The Youth Rehabilitation Amendment Act of 2017 (October 26, 2017) at p.1 https://cic.dc.gov/sites/default/files/dc/sites/cic/page_content/attachments/CIC%20Testimony%20on%20Youth%20Rehabilitation%20Amendment%20Act%202017%2010.26.17.pdf

misconduct.”¹⁹ This program is offered at two BOP facilities: FCI Beckley in West Virginia, and FCI Victorville Medium II in California.²⁰ However, the District has no control of where inmates convicted in the Superior Court of the District of Columbia (SCDC) may be housed within the BOP.²¹ Other programs offered by BOP facilities across the country are not designed specifically for incarcerated young adults.²²

c) The DOC does not currently provide specific treatment and programs specifically designed for YRA offenders.

The DOC does not provide specific treatment and programs for YRA offenders, but the standard programming opportunities²³ that are available to anyone who is confined within the DOC is also available to this particular population. However, the YRA is designed to be an alternative sentence. Therefore, post sentencing, an individual would be unable to utilize any programming opportunities specifically designed for that YRA population since he or she would serve their time within the Bureau of Prisons. It is presently unclear as to how the Mayor will accommodate this conundrum.

d) The programming benefits and rehabilitative efforts that existed under the 1985 YRA are absent under the 2018 version.

There is a programmatic contrast between the 1985 YRA and the 2018 version of the YRA. The 1985 version of this Act was more treatment and program-oriented, which profoundly contributed to rehabilitation efforts. YRA prisoners under the 1985 version were also able to achieve earlier release dates through the parole board:

(1) Program plans and using program achievement to set the parole date. At a YRA prisoner's initial parole [hearing](#), a program plan for the prisoner's treatment shall be submitted by institutional staff and reviewed by the [hearing](#) examiner. Any proposed modifications to the plan shall be discussed at the [hearing](#), although further relevant information may be presented and considered after the [hearing](#). The plan shall adequately account for the risk implications of the prisoner's current offense and criminal history and shall address the prisoner's need for rehabilitational training. The program plan shall also include an estimated date of completion. The criteria at [§ 2.64\(d\)](#) for successful response to

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ D.C. Department of Corrections, *Services Offered to Persons Housed in DC DOC Facilities* (September 2019), <https://doc.dc.gov/page/services-offered-persons-housed-dc-doc-facilities>.

treatment programs shall be considered by the [Commission](#) in determining whether the proposed program plan would effectively reduce the risk to the public welfare.

(2) The youth offender's response to treatment programs and program achievement shall be considered with other relevant factors, such as the offense and parole prognosis, in determining when the youth offender should be conditionally released under supervision. *See* [§ 2.64\(c\)](#). The guidelines at [§ 2.80\(k\)](#)-(m) on awarding superior program achievement and the subtraction of any award in determining the total guideline range shall not be used in the decision.²⁴

Despite those differences, the YRA of 2018 gives the court greater flexibility when imposing a sentence on a person who was under the age of 25 at the time the crime was committed. There are two major benefits to a sentence that is imposed under the Act. First, in cases in which there is a mandatory minimum prison term, the Act allows the court to impose a sentence that is below that minimum.²⁵ Second, the Act authorizes the court to “set aside” a conviction (that is, to seal it from public view) upon successful completion of the sentence.²⁶ However, the programming benefits and rehabilitative efforts that existed under the 1985 YRA are absent under the 2018 version.

²⁴ Youth Rehabilitation Act, 28 CFR §§ 2.106 (d)(1)-(2)(2009), <https://www.govinfo.gov/content/pkg/CFR-2009-title28-vol1/pdf/CFR-2009-title28-vol1-sec2-106.pdf>.

²⁵ D.C. Code § 24-903 (b)(2)(2019), Sentencing Alternatives, <https://code.dccouncil.us/dc/council/code/sections/24-903.html>.

²⁶ D.C. Code § 24-906 (2019), Unconditional discharge sets aside conviction, <https://code.dccouncil.us/dc/council/code/sections/24-906.html>.

RECOMMENDATIONS

1. Considering that there are only approximately 250 YRA offenders, the CIC recommends that these inmates be designated to two BOP facilities due to custody level and classification issues: one high security facility and one medium security facility. Both facilities should implement programs and treatments that are tailored specifically for YRA offenders.
2. The CIC recommends that the BOP design and publicize specific treatment and programs being provided to DC YRA offenders, and provide the CIC and public at-large with targeted information regarding its impact on the YRA population
3. The CIC recommends that the Mayor publicize specifically designed treatment and programs that YRA offenders should be receiving while in the custody of the DOC and BOP, and provide the CIC and public at-large with targeted information regarding its impact on the YRA population.

